

Report No. 50 of the Director of Audit — Chapter 7

WORKS CONTRACTS FOR A LANTAU DEVELOPMENT

Summary

1. To support the development of a theme park at Penny's Bay, Lantau, the Government needed to form about 200 hectares of land and to provide associated infrastructure before the scheduled commissioning of the theme park in 2005. The Civil Engineering and Development Department (CEDD) was required to complete the related works under tight time schedules. The Audit Commission (Audit) has recently conducted a review of the CEDD's administration of three major works contracts of the development, namely: (a) a contract for reclamation works (Contract A); (b) a contract for constructing infrastructure facilities (Contract B); and (c) a contract for decommissioning a former shipyard and constructing infrastructure facilities thereon (Contract C). Audit has found that, while the three contracts were substantially completed on or before the scheduled completion dates, there are areas where the CEDD can make improvement in contract administration.

Sand supply for reclamation works

2. At the planning stage of the development, the CEDD estimated that about 60 million cubic metres of marine sand would be required for the reclamation works. The Marine Fill Committee, chaired by the Director of Civil Engineering and Development with representatives from government bureaux and departments as its members, identified that the required sand could be obtained from: (a) the East Lamma Channel; and (b) Mainland waters near Wailingding Island.

3. *Need to specify precautionary measures in reclamation contract.* In 1992, the CEDD's site investigation of the East Lamma Channel detected some magnetic anomalies which were likely to be due to metallic debris. These anomalies could represent some hazards to a dredger during sand excavation. In April 2000, the CEDD awarded Contract A incorporating a clause drawing the contractor (Contractor A)'s attention to the possible presence of metallic obstructions in the East Lamma Channel. The Marine Fill Committee's guidance note recommended a precautionary measure of using a filtering device during dredging operations in Hong Kong waters to minimise the risk associated with ordnance. Contractor A took the precautionary measure and found 256 unexploded

ordnance items during sand excavation. However, the measure was not specified in Contract A. *Audit has recommended that, for a reclamation contract using sand from seabed with potential presence of unexploded ordnance, the Director of Civil Engineering and Development should specify in the contract the necessary precautionary measures to minimise the associated risk.*

4. ***Need to specify scanning works in infrastructure contract.*** In March 2001, Contractor A commenced scanning for ordnance buried in the reclaimed land formed by sand from the East Lamma Channel. In June 2001, after consulting the future land user, the CEDD appointed a specialist to carry out an independent scanning of the reclaimed land, covering a depth of 2 metres below the formation level. Unexploded ordnance items were found during the scanning. In October 2001, the CEDD awarded Contract B to a contractor (Contractor B). In 2002, after a review, the CEDD noted that there was a need for further precautionary measures to reduce any residual risk of ordnance left in the reclaimed land. In August 2002, the CEDD instructed Contractor B to carry out scanning of the reclaimed land, covering a depth of 3 metres below the formation level. As the scanning works were not included in Contract B, the CEDD paid a lump sum to Contractor B for the measures taken to complete the Contract B works by the originally scheduled date. *Audit has recommended that, for infrastructure works to be carried out on reclaimed land where a large number of unexploded ordnance items have been found, the Director of Civil Engineering and Development should specify in the infrastructure contract the scanning works required after consulting, where appropriate, the future land user.*

5. ***Need for explicit statement on exclusion of liability.*** In November 1999, the CEDD attached to the prequalification documents for Contract A an information note on sand supply from Mainland waters for the prequalification applicants' reference. In December 2001, Contractor A submitted a claim to the CEDD on the grounds that he could not obtain sand from a company as suggested in the information note. The CEDD subsequently paid Contractor A a lump sum to settle his claim. While the CEDD stated in the prequalification documents that the information note was for reference only, there was no explicit exclusion of liability for such information. There was also no explicit statement that the information so provided was limited to the tender prequalification stage. *Audit has recommended that the Director of Civil Engineering and Development should consider including an explicit statement on exclusion of liability in prequalification documents after seeking legal advice.*

6. ***Need to seek legal advice for prequalification documents.*** According to the Project Administration Handbook, the tender documents of a works contract valuing \$300 million or more should be vetted by the Legal Advisory Division (Works) of the Development Bureau before tender invitation. However, there was no requirement for similar legal vetting of prequalification documents. *Audit has recommended that the*

Director of Civil Engineering and Development should seek legal advice on relevant parts of prequalification documents which contain information involving significant financial implications or commercial sensitivity.

Contract variations

7. ***Need to comply with the Stores and Procurement Regulations.*** According to the Stores and Procurement Regulations, for a variation essential for the completion of works with an estimated value exceeding \$3 million, the Controlling Officer's approval is required. Furthermore, as stated in the Project Administration Handbook, such an approval must be sought prior to the ordering of the variation. However, Audit examination of the two highest-value variation orders issued under Contract B and the highest-value variation order issued under Contract C revealed that the CEDD staff only sought the Director of Civil Engineering and Development's approvals after the ordering of the variation works. *Audit has recommended that the Director of Civil Engineering and Development should remind CEDD staff of the need to seek his prior approval for a contract variation.*

8. ***Need to strengthen checking of contract documents.*** Under Contracts B and C, Contractor B and the contractor of Contract C (Contractor C) were required to carry out some planting works. However, the planting works for a site were included in both Contracts B and C. In February 2003, with approval from the CEDD, the planting works for the site were deleted from Contract C. There was no additional cost arising as the deletion of the works was a valid instruction under the terms of Contract C. *Audit has recommended that the Director of Civil Engineering and Development should take effective measures to strengthen the checking of contract documents.*

Revisions of site handover dates

9. ***Need to include proper site handover dates in works contracts.*** According to the conditions of a land grant (for the use of reclaimed land at Penny's Bay) issued in September 2000, the Government would hand over to the Grantee a piece of reclaimed land (including Site N) after the certified completion of the infrastructure works. In November 2001, the CEDD noted that the infrastructure works completion date agreed by the relevant parties would be 6 July 2003. However, in July 2002, the CEDD awarded Contract C under which Contractor C was required to return Site N by July 2005. To repossess Site N earlier, the CEDD paid Contractor C a lump sum and provided to the contractor temporary works sites to the west of Penny's Bay. *Audit has recommended that the Director of Civil Engineering and Development should: (a) remind CEDD staff of the need to check vigilantly site handover dates in a works contract with a view to ensuring that the dates are compatible with related land grant conditions; and (b) include in the tender procedure checklist a procedure to check site handover dates in tender documents.*

10. *Need to inform the relevant tender board of special circumstances.* According to the Stores and Procurement Regulations, works departments should state in a tender report to the relevant tender board any special circumstances governing the tender recommendations. On 20 July 2002, the CEDD noted that there could be a problem in handing over Site N to the Grantee in mid-2003. However, in its tender report for Contract C submitted to the Central Tender Board on 22 July 2002, the CEDD did not report the site handover problem. *Audit has recommended that the Director of Civil Engineering and Development should inform the relevant tender board of special circumstances governing a tender recommendation in accordance with the Stores and Procurement Regulations.*

Response from the Administration

11. The Administration has accepted the audit recommendations.

April 2008